




## *Report to the Auburn City Council*

Action Item	8
Agenda Item No.	
 City Manager's Approval	

**To:** Honorable Mayor and City Council Members  
**From:** Robert Richardson, City Manager  
Andy Heath, Administrative Services Director  
**Date:** July 25, 2011  
**Subject:** CalPERS Contract Amendment Ordinance – Section 21428 - Increase Industrial Disability Allowance to 75% of Final Compensation for Local Fire Members

### *The Issue*

Shall the City Council waive full reading and introduce a first reading of an Ordinance approving an amendment to the Contract between the City of Auburn and CalPERS providing Public Employees' Retirement Law Section 21428 (Increase Industrial Disability Allowance to 75% of Final Compensation) for local fire members?

### *Conclusions and Recommendations*

By MOTION, waive full reading and introduce a first reading of an Ordinance approving an amendment to the contract between the City of Auburn and CalPERS, providing Public Employees' Retirement Law Section 21428 (Increase Industrial Disability Allowance to 75% of Final Compensation) for local fire members.

### *Background*

On September 13, 2010 and May 23, 2011, the City Council approved Resolutions No. 10-117 and 11-56 adopting the Memoranda of Understanding (MOU) between the Auburn Firefighter's Association and the City of Auburn for the periods July 1, 2010 through June 30, 2011 and July 1, 2011 through June 30, 2013, respectively. As referenced in both of the approved MOU, the City agreed to contract with CalPERS as soon as practicable to provide the Public Employees' Retirement Law Section 21428 – Increased Industrial Disability Allowance to 75% of Final Compensation Benefits for local fire members.

As a means to begin the process of implementing the necessary changes to the CalPERS contract, the City Council approved Resolutions No. 11-69 and 11-70 on June 27, 2011, disclosing the cost of providing the enhanced benefit and effectuating the intent to amend the City's contract with CalPERS, respectively. The final step in the contract amendment

implementation process is to enact an ordinance codifying the change to the benefit structure.

As a means to assure this recommended CalPERS benefit amendment is properly enacted, the City must certify compliance with Section 7507 of the California Government Code which requires the following:

- Preparation of actuarial report summarizing the actuarial impact upon future annual costs before authorizing changes in the retirement plan benefits;
- Disclosure of future annual costs of the benefit changes at a public meeting of the City Council;
- A requirement that the enacting ordinance not be placed upon the consent calendar; and
- The presence of an actuary at the public meeting which the adoption of the benefit change was considered to the extent future costs of the benefit changes exceed  $\frac{1}{2}$  of 1% of the future annual costs of the existing benefits.

Pursuant to the report completed by the CalPERS actuary, future annual costs for the increase in retirement benefits are estimated to be 5.093% of local fire member pensionable income for firefighters hired prior to the May 1, 2011 and 3.899% of local fire member pensionable income for firefighters hired on and after May 1, 2011. These added premiums will ultimately cover the increases to the plan's present value of benefits and accrued liability of \$275,631 and \$115,489, respectively. *To the extent there are any questions regarding any of these costs, a CalPERS Actuary will be present at the July 25, 2011 City Council meeting.*

#### **Alternatives Available to Council; Implications of Alternatives**

1. Waive full reading and introduce a first reading of the ordinance as recommended by staff.
2. Do not waive full reading and introduce a full reading of the ordinance and direct staff accordingly. This option may require legal advice regarding the City's obligations under existing MOUs with employee bargaining units.

#### **Fiscal Impact**

As previously reported on June 27, 2011, the incremental annualized cost to implement this benefit for Fiscal Year 2011-12 will be \$40,190, which consists of expanded benefits costs of \$29,024 and a change in the accrued liability component of \$11,166. These costs have been considered with the development of the budget for the 2011-12 fiscal year.

Attachments – Draft Amendment to CalPERS Contract



California  
Public Employees' Retirement System

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**AMENDMENT TO CONTRACT**

Between the  
Board of Administration  
California Public Employees' Retirement System  
and the  
City Council  
City of Auburn

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The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective July 1, 1970, and witnessed March 31, 1970, and as amended effective July 1, 1973, November 1, 1978, July 1, 1984, June 24, 1993, June 16, 1996, September 16, 2000, April 16, 2002, April 10, 2003, July 1, 2010 and May 1, 2011 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 14 are hereby stricken from said contract as executed effective May 1, 2011, and hereby replaced by the following paragraphs numbered 1 through 14 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after July 1, 1970 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
  - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
  - (b) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than existing retirement benefits, provisions or formulas.
  - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
  - (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.
  - (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.
  - (f) The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.
  - (g) Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.

4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
  - a. Local Fire Fighters (herein referred to as local safety members);
  - b. Local Police Officers (herein referred to as local safety members);
  - c. Employees other than local safety members (herein referred to as local miscellaneous members).
5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
  - a. **PERSONS COMPENSATED ON AN HOURLY BASIS.**
6. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service prior to July 30, 1973, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
7. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member entering membership in the safety classification on or prior to May 1, 2011 shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
8. The percentage of final compensation to be provided for each year of credited current service as a local safety member entering membership for the first time in the safety classification after May 1, 2011 shall be determined in accordance with Section 21362 of said Retirement Law (2% at age 50 Full).
9. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Section 20042 (One-Year Final Compensation).
  - b. Section 21222.1 (One-Time 5% Increase - 1970). Legislation repealed said Section effective January 1, 1980.
  - c. Section 20965 (Credit for Unused Sick Leave).
  - d. Section 21024 (Military Service Credit as Public Service).
  - e. Section 20903 (Two Years Additional Service Credit).

- f. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local fire members only.
  - g. Section 20475 (Different Level of Benefits). Section 21362 (2% @ 50 Full formula) is applicable to local safety members entering membership for the first time in the safety classification after May 1, 2011.
  - h. Section 21428 (Increased Industrial Disability Allowance to 75% of Final Compensation) for local fire members only.
- 10. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on November 1, 1978. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
- 11. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
- 12. Public Agency shall also contribute to said Retirement System as follows:
  - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local fire members.
  - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
  - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
- 13. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

14. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
CITY OF AUBURN

BY \_\_\_\_\_  
DARRYL WATSON, CHIEF  
CUSTOMER ACCOUNT SERVICES DIVISION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest:

\_\_\_\_\_  
Clerk

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN,  
CALIFORNIA APPROVING THE AMENDMENT TO THE CONTRACT  
BETWEEN THE CITY OF AUBURN AND CALPERS PROVIDING  
SECTION 21428 (INCREASED INDUSTRIAL DISABILITY  
ALLOWANCE TO 75% OF FINAL COMPENSATION) FOR LOCAL FIRE  
MEMBERS

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THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS

Section One:     Amendment. An Amendment to the contract between the City Council of the City of Auburn and the Board of Administration of the California Public Employees' Retirement system is hereby approved. A copy of said Amendment is attached hereto as Exhibit "A" and incorporated by reference herein.

Section Two:     Authority to Execute Amendment. The Mayor of the City Council for the City of Auburn is hereby authorized, empowered, and directed to execute said Amendment for and on behalf of the City of Auburn.

Section Three:     Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section Four:     Effective Date. Pursuant to Section 36937 of the California Government Code, this Ordinance shall take effect 30 days after its passage and adoption.

1        Section Five:      Certification. The City Clerk shall certify to the passage  
2 and adoption of this Ordinance and shall give notice of its adoption as required  
3 by law. Pursuant to Government Code Section 36933, a summary of this  
4 Ordinance may be published and posted in lieu of publication and posting of  
5 the entire text.

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8 DATED: \_\_\_\_\_, 2011

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WILLIAM W KIRBY, MD, Mayor

ATTEST:

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Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify  
that the foregoing ordinance was duly passed at a regular meeting of the City  
Council of the City of Auburn held on the \_\_\_\_ day of \_\_\_\_ 2011 by the  
following vote on roll call:

Ayes:  
Noes:  
Absent:

\_\_\_\_\_  
Joseph G. R. Labrie, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael G. Colantuono, City Attorney

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